

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RENA COHEN,

Plaintiff,

-against-

INSERRA SUPERMARKETS, INC. and SHOPRITE
OF TALLMAN,

Defendants.
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Case No.:

NOTICE OF REMOVAL

Defendants, INSERRA SUPERMARKETS, INC. and “SHOPRITE OF TALLMAN”, (“Inserra”) by their attorneys, FISHMAN MCINTYRE LEVINE SAMANSKY P.C., respectfully petition the United States District Court, Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about June 7, 2021 in the Supreme Court of the State of New York, County of Rockland. The suit is identified in the Supreme Court as *Rena Cohen v. Inserra Supermarkets, Inc., Wakefern Food Corp. and Shoprite of Tallman*, Index Number 33131/2021. A true copy of plaintiff’s Summons and Verified Complaint is cumulatively annexed hereto as **Exhibit A**.
2. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows this court to hear matters based on diversity of citizenship of the parties. On or about July 7, 2021, an Answer to plaintiff’s Summons and Complaint was filed in the Supreme Court of the State of New York, County of Rockland, on behalf of all defendants. See **Exhibit B**.
3. Defendant, Wakefern Food Corp., was dismissed with prejudice pursuant to stipulation on September 30, 2021. See **Exhibit C**.
4. Inserra is a foreign business corporation incorporated in New Jersey, with its principal place of business in Mahwah, New Jersey. See **Exhibit D**.

5. There is no entity, corporation or individual known as “Shoprite of Tallman”. Rather, it is merely a trade name. Indeed, a search of the New York Department of State Division of Corporations for “Shoprite of Tallman” as well as “Shop Rite of Tallman” fails to reveal any returns. See **Exhibit E**. Rather, the same is merely an internal identifier for this particular store, allowing both Inserra and the public at large to identify the particular “Shoprite” as being in Tallman, New York.

6. Plaintiff’s Complaint in the Supreme Court of the State of New York, County of Rockland, asserts monetary damages relating to personal injuries in a non-specified amount. However, plaintiff specifically claims that as a result of the incident complained of therein, she “was caused to sustain serious injuries” and that said “injuries and their effects will be permanent[.]” See **Exhibit A**, para. 64.

7. At or about the time Inserra filed an Answer to plaintiff’s Complaint, Inserra served upon the plaintiff a number of discovery demands, including a demand for a statement of damages pursuant to C.P.L.R. 3017, and a request to admit.

8. By way of “Response to Demand for Damages” dated May 6, 2022, plaintiff has demanded damages herein in the amount of “\$1,000,000.00”. A true copy of said response is annexed hereto as **Exhibit F**.

9. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs. Indeed, plaintiffs have claimed damages of 13 times such jurisdictional threshold!

10. In addition, this notice of removal is filed within 30 days of plaintiff’s damage disclosure served on Inserra’s counsel’s office on or about May 6, 2022.

11. At or about the same time Inserra served its initial discovery demands upon plaintiff, Inserra also served on plaintiff a Request to Admit. A true copy of said request is attached hereto as **Exhibit G**.

12. Plaintiff responded to the Request to Admit on or about May 5, 2022, indicating therein that “plaintiff was and is a citizen of New York” on June 29, 2018 [i.e., the date which forms the basis of

plaintiff's Complaint herein]. See Exhibit H, page 2.

13. Based upon the foregoing, diversity of citizenship exists. Plaintiff is a citizen of the State of New York. On the other hand, Inserra is a foreign business corporation, incorporated in the State of New Jersey and having its principal place of business in New Jersey. As referred to above, "Shoprite of Tallman" is a nonexistent entity or individual, and therefore is not capable of being sued. As a non-existing entity or individual, it is not a citizen or resident of anywhere or anything. Therefore, this action is between a citizen of the State of New York (plaintiff) and a corporation other than New York, defendant, Inserra.


14. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446(d), as evidenced in the annexed Certificate of Service.

15. Promptly after filing this Notice with the Court and the assignment of a civil docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of Rockland, in accordance with 28 U.S.C. §1446(d).

WHEREFORE Petitioner, INSERRA SUPERMARKETS, INC., including being sued in this action as "SHOPRITE OF TALLMAN", defendant in the action described herein now pending the Supreme Court of the State of New York, County of Rockland, under Index No. 33131/2021, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York
May 23, 2022

Yours etc.,



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